

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL NO. 1:06CV228**

**KENNETH G. MESSER,** )  
 )  
 **Plaintiff,** )  
 )  
 **Vs.** )  
 )  
 **BORG WARNER AUTOMOTIVE** )  
 **TURBO SYSTEMS CORP.;** )  
 **PEG GLENN; and MYRA** )  
 **BUTLER,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**ORDER OF DISMISSAL**

**THIS MATTER** is before the Court on an Order and Notice issued by the Magistrate Judge on January 4, 2007, pursuant to the Defendants' filing of a suggestion of death upon the record of the *pro se* Plaintiff Kenneth G. Messer.

It appears from the record that personal service of the Magistrate Judge's Order was made on Plaintiff's heir at law (his mother), Joan Baker Messer Silvers, by the United States Marshal on January 8, 2007. To date, this Court has not received any notification that an executor or administrator has been appointed to administer the Plaintiff's estate, nor

has an executor or administrator moved to be substituted as party plaintiff in this case within the time period set forth in the Magistrate Judge's Order.

**IT IS, THEREFORE, ORDERED** that, the 90-day time period having expired, this matter is hereby **DISMISSED** in its entirety.

Signed: March 22, 2007

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

